# HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

**CWP No. 225 of 2006**

**Date of Decision: 10.5.2007**

H.R.T.C. through its MD ……. Petitioner

Versus

Suresh Kumar …….. Respondent.

***Coram***:

The Hon'ble Mr. Justice Sanjay Karol, Judge.

*Whether approved for reporting? Yes.*

For the petitioner : Mr. H. S. Rawat, Advocate.

For the respondent : Mr. Deepak Kaushal, Advocate.

---

**Sanjay Karol, J. (Oral)**

This judgment is being dictated in open Court in presence of the learned counsel for the parties.

Petitioner has assailed the award dated 18th August, 2005 passed by the H. P. Industrial Tribunal-cum-Labour Court, Shimla, in Reference No. 77 of 1998.

Petitioner was appointed as driver vide orders dated 24th April, 1993 in HRTC and was served with a show cause notice dated 18th January, 1994, wherein the respondent held that he was not a fit person to be retained in the services of the Corporation and provisionally proposed to impose the penalty of removal from service. Reply to the show cause notice was filed and vide orders dated 12th April, 1994, petitioner's services were terminated.

On a dispute raised by the petitioner, reference dated 14th

---

***. Whether reporters of Local Papers may be allowed to see the judgment?***

July, 1998 was made under Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') to the Tribunal, which was decided vide Award dated 18th August, 2005.

The Tribunal has held that the dismissal of the petitioner, is stigmatic and without proper inquiry, therefore, is bad in law. The order of termination was set aside and the petitioner was directed to be reinstated with back wages.

In order to appreciate the controversy, it would be essential to reproduce some portions of the memorandum dated 17th January, 1994 as also the order of termination are reproduced below:-

"**MEMORANDUM**

Whereas Shri Suresh Kumar, s/o Shri Gian Chand, resident of Village Moginand, PO Kala Amb, Nahan, was appointed as a driver vide office order No. DM(N)1-54-E(DVR)/XVI-651 to 664, dated 24.4.1993 and posted as such, in Taradevi Unit, 10.4.1993.

And whereas the said Shri Suresh Kumar, driver HRTC, Nahan, was put under probation for a period of two years vide Clause-2 (IX) of the aforesaid appointment order No. 651-664, dated 24.4.1993.

And whereas the work and conduct of the said Shri Suresh Kumar, driver, in the opinion of the undersigned (Appointing Authority) while under probation, has not found satisfactory due to his involvement in various acts of omission and commission.

Now, therefore, after gone through the whole record, the undersigned has come to the conclusion that Shri Suresh Kumar, driver, is not a fit person to be retained in the Corporation services and therefore, provisionally proposes to impose the penalty of REMOVAL from service, upon the said Shri Suresh Kumar, driver, HRTC, Nahan Unit by invoking the probation clause of the appointment orders. He is hereby given an opportunity of making a representation against the above proposed action. A

representation which he may wish to make in this behalf, will be considered by the undersigned. Such representation, if any, should be made in writing so as to reach the undersigned not later than fifteen days from the receipt of this memorandum / show cause notice by Shri Suresh Kumar, driver, HRTC, Nahan Unit."

**OFFICE ORDER**

Whereas Shri Suresh Kumar, s/o Shri Gian Chand, resident of Village Moginand, PO Kala Amb, Nahan, was appointed as a driver vide office order No. DM(N)1-54-E(DVR)/XVI-651 to 664, dated 24.4.1993 and posted as such, in Taradevi Unit on 10.4.1993.

And whereas the said Shri Suresh Kumar, driver HRTC, Nahan, was put under probation for a period of two years vide Clause-2 (IX) of the aforesaid appointment order No. 651-664, dated 24.4.1993.

And whereas the work and conduct of the said Shri Suresh Kumar, driver, in the opinion of the undersigned (Appointing Authority) while under probation, was not found satisfactory due to his involvement in various acts of omission and commission.

And whereas the said Shri Suresh Kumar, driver was served with a Show Cause Notice, vide Memorandum No. DM(N)1-2360-E(DVR) / Suresh Kumar / 94-Disp-8684-85, dated 18-1-1994.

And whereas Shri Suresh Kumar, driver furnished his reply to the Show Cause Notice on dated nil.

Now, therefore, after gone through the whole record, reply etc. the undersigned, in exercise of the powers vested in him under C.C.S. (CC&A) Rules, 1965 and all other powers enabling him in this behalf, hereby terminated the services of Shri Suresh Kumar, driver, HRTC, Nahan Unit, under probation clause."

From the aforesaid, it is clear that the order of termination refers to and is based on the memorandum. It is not a simpliciter order of termination or non confirmation of the employee at the end of probation

period. The order of termination holds that the work of the employee is unsatisfactory due to various acts of omission and commission. It is not an order based on the unsatisfactory work for which an employee cannot be confirmed on probation. Learned counsel for the petitioner has relied upon 2002(I) SCC 520 ***Pavanendra Narayan Verma*** v. ***Sanjay Gandhi PGI of Medical Sciences and another*** to contend that the order is not stigmatic and, therefore, no inquiry was required to be held prior to the termination of the employee. There is no dispute that if the order is not stigmatic, then termination simpliciter is permissible. However, this is not the case in hand. Learned counsel for the respondent has referred to 1999(3) SCC 60 ***Dipti Prakash Banerjee*** v. ***Satyendra Nath Bose National Centre for Basic Sciences*** in support of his contentions that the termination of the services of the employee is stigmatic and is not termination simpliciter inasmuch as the authorities have relied upon the show cause notice / memorandum proposing to impose the penalty upon the respondent. Keeping in view the facts and circumstances of the case, I hold that the order is stigmatic and not a simple order of termination.

Mr Kaushal, learned counsel for the respondent during the course of hearing gave an undertaking that his client would not claim any back wages as have been awarded by the Tribunal. The undertaking of the respondent is taken on record and accordingly, the award is modified to the extent that the respondent shall not be entitled for any back wages from the period of his termination till the date of his joining. Petitioner is directed to allow the respondent to join within a period of two weeks from today. The petitioner shall inform the respondent, the time and place of joining at the address given in the memo of parties of the writ petition.

I, therefore, see no reason to interfere with the well reasoned award. The writ petition is dismissed with the modification in the award.

**( Sanjay Karol )**
**Judge.**

**May 10, 2007.**
**(rana)**